

Exhibit A

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1 MESCH CLARK ROTHSCHILD
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (520) 624-8886
5 Fax: (520) 798-1037
6 Email: gcohen@mcrazlaw.com
ploucks@mcrazlaw.com
jcoe@mcrazlaw.com

7 By: Gary J. Cohen, # 15002
8 Paul A. Loucks, #19880
9 Jeffrey J. Coe, #30581
20044-1/jjc
Attorneys for Plaintiff The City of Benson

11 SUPERIOR COURT OF THE STATE OF ARIZONA

12 COUNTY OF COCHISE

13 CITY OF BENSON, a municipal
14 corporation,

15 Plaintiff,

16 v.

17 GMAC MORTGAGE, LLC, a Delaware
18 limited liability company,

19 Defendant.
20

No. **CV 201600530**

**VERIFIED COMPLAINT AND
APPLICATION FOR
PRELIMINARY INJUNCTION**

DIV. 1

21 Plaintiff City of Benson ("City of Benson" or "City") hereby alleges as follows:

22 **GENERAL ALLEGATIONS**

23 1. The City of Benson is a municipality incorporated within Cochise County
24 with legal authority to regulate the public health, safety and general welfare.

25 2. All acts alleged in this Complaint occurred or are occurring in Cochise
26 County, Arizona.

1 3. This Court has subject matter jurisdiction over this action.

2 4. Defendant is the owner of record of the real property located at 185 W. 4th St.,
3 Benson, Arizona, identified by tax parcel identification numbers 123-20-010B, 123-20-
4 010C, 123-20-010D, and 123-20-010E of the Cochise County Assessor's Office
5 ("Property").

6 5. Pursuant to A.R.S. §9-240(B)(21), the City of Benson is authorized "(a) to
7 define, abate and remove nuisances, and punish persons committing nuisances, and (b) [t]o
8 compel the owner or any occupant of any house or premises to clean the grounds, stables,
9 alleys, streets and walks appurtenant and adjacent thereto."

10 6. Article 9 of the Benson City Code ("City Code") establishes requirements for
11 maintenance of all private property, structures, and land for the purpose of promoting the
12 health, safety and welfare of the citizens of the City of Benson and protecting against
13 nuisances, blight and deterioration.

14 7. Pursuant to City Code §9-2-6, it is unlawful for any owner, lessor, lessee,
15 manager or other person in control of private property to fail to maintain the property and
16 contiguous areas in such a manner so as to not create a public nuisance.

17 8. The improvements on the Property constitute a public nuisance as they have
18 been maintained.

19 9. Section 9-2-7 of the City Code requires a Notice to Abate and Cost
20 Assessment to be served upon the owner of record, as recorded in the Cochise County
21 Recorder's Office, before the City files a civil citation or complaint.

22 10. Pursuant to authority granted by A.R.S. §9-802, the City of Benson has
23 adopted the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings
24 ("UCADB").

1 11. Section 401 of the UCADB permits the Building Official to commence
2 proceedings to cause the repair, vacation or demolition of a building that has been
3 determined to be a “dangerous building.”

4 12. Section 302 of the UCADB defines a “dangerous building” as one that has any
5 or all of eighteen listed conditions which endanger the life, health, property, or safety of the
6 public or its occupants.

7 13. Under section 401 of the UCADB, adopted by the City of Benson, after the
8 Building Official determines that a building is a dangerous building, the Building Official is
9 required to issue a Notice and Order directed to the owner of the dangerous buildings which
10 describes the actions required to be taken as determined by the Building Official.

11 14. In April 2015, the Benson City Zoning Administrator determined that the
12 Property had been abandoned but was still accessible and used by vagrants.

13 15. On April 7, 2015, the City Zoning Administrator sent a Notice to Abate and
14 Cost Assessment to Defendant, the record owner of the Property, with a response date of
15 May 28, 2015. The Notice described a public nuisance caused by “retention of dilapidated
16 and dangerous buildings on the property which are accessible, have had a fire in one of the
17 buildings that the City of Benson Fire Department was called out to extinguish, buildings
18 are full of debris, trash and old furniture, yard areas have uncultivated grass, brush and
19 weeds over ten inches in height.” The Notice to Abate and Cost Assessment and
20 accompanying photographs are attached as Exhibit A.

21 16. The buildings on the Property constitute dangerous buildings as they have
22 been maintained.

23 17. Defendant did not respond to the Notice to Abate and Cost Assessment. On
24 May 30, 2015, a site visit indicated no change on the Property or buildings.

25 18. On June 30, 2016, the Building Official issued a Notice and Order of
26 Demolition for the buildings located at the Property to the Defendant and posted the Notice

1 and Order at the Property. The Building Official determined that the buildings were
2 “dangerous buildings” because ten of the conditions listed in the UCADB §302 existed on
3 the Property. The Notice and Order of Demolition and accompanying photographs are
4 attached as Exhibit B.

5 19. Chapter 5 of the UCADB allows a property owner to appeal a building
6 official’s determination that a property contains dangerous buildings.

7 20. The Notice and Order of Demolition required Defendant to respond by
8 September 1, 2016.

9 21. Despite the Notice to Abate and Cost Assessment issued on April 7, 2015 and
10 the Notice and Order of Demolition issued on June 30, 2016, Defendant has neither abated
11 the nuisance, nor demolished the buildings.

12 22. Defendant has not appealed or sought administrative review of either
13 determination.

14 **WHEREFORE**, Plaintiff respectfully requests that the Court:

- 15 A. Set a hearing for a preliminary injunction to abate Defendant’s violations of
16 the Benson City Code and the Uniform Code for the Abatement of Dangerous
17 Buildings as alleged in this Complaint.
- 18 B. Order that the trial on the merits of this matter be accelerated pursuant to Rule
19 65(a)(2) Ariz. R. Civ. P. so that the trial may be consolidated with the hearing
20 on the Plaintiff’s application for Preliminary Injunction.
- 21 C. Upon conclusion of the hearing on Plaintiff’s Application for Preliminary
22 Injunction and trial on the merits, enter a permanent order requiring
23 Defendant, within a specified and prompt time, to demolish the buildings on
24 the Property and abate all nuisances on the Property.
- 25
26

- 1 D. Enter a permanent alternative order allowing the City of Benson to demolish
2 and abate nuisances on the Property in the event that Defendant fails to
3 comply within the specified time.
- 4 E. Grant judgment in favor of the City of Benson for its costs incurred in this
5 matter.
- 6 F. Retain jurisdiction of this action for the purposes of enforcing the judgment
7 and orders prayed for herein.
- 8 G. Should the City abate the violations on the Property, enter a judgment in favor
9 of the City of Benson for the costs of the abatement.
- 10 H. Award such other and further relief as the Court deems just and appropriate
11 under the circumstances.

12 RESPECTFULLY SUBMITTED this 24th day of October, 2016.

13
14 MESCH CLARK ROTHSCHILD, P.C. as
15 BENSON CITY ATTORNEY

16 By: 
17 _____

Gary J. Cohen

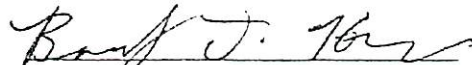
Paul A. Loucks

Jeffrey J. Coe

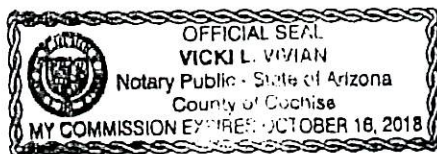
1 VERIFICATION

2 STATE OF ARIZONA)
3) ss.
4 COUNTY OF COCHISE)

5 I, Bradley J. Hamilton, being first duly sworn upon my oath, depose and say that I am
6 the Zoning Administrator for the City of Benson, that I have read this Verified Complaint
7 and know the contents thereof, and I believe the property and zoning allegations contained
8 in the Verified Complaint are true based upon my information and belief.

9 
Bradley J. Hamilton

10
11 SUBSCRIBED AND SWORN TO before me on this 13th day of September, 2016,
12 by Brad Hamilton.




Notary Public